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PO BOX 747
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In re Application of :
ANDERSSON, Gert, et al. : DECISION
U.S. Application No.: 10/531,274 :
PCT No.: PCT/SE2003/001709 :
International Filing Date: 04 November 2003 :
Priority Date: 05 November 2002 :
Atty Docket No.: 2921-0148PUS1 :
For: METHOD OF PRODUCING A :
MOVABLE LENS STRUCTURE :
FOR A LIGHT SHAPING UNIT :
:

This decision is issued in response to the 25 September 2006 filing of a "Request For Corrected Notice Of Acceptance" and the 14 October 2005 submission of a declaration executed on behalf of deceased inventor Sverker HARD, treated herein as a submission under 37 CFR 1.42. No petition fee is required.

BACKGROUND

On 04 November 2003, applicants filed international application PCT/SE2003/001709. The international application claimed a priority date of 05 November 2002, and it designated the United States. On 21 May 2004, the International Bureau (IB) communicated a copy of the international application to the United States Patent And Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 05 May 2005.

On 13 April 2005, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee and an application data sheet (ADS).

On 07 September 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Acceptance (Form PCT/DO/EO/903) identifying 13 April 2005 as the "Date Of Receipt Of 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) Requirements" and 05 May 2005 as the "Date Of Completion Of All 35 U.S.C. 371 Requirements." On the same date, a filing receipt was issued identifying 13 April 2005 as the 35 U.S.C. 371(c) date.

On 14 October 2005, applicants filed an executed declaration and supplemental ADS. The declaration was executed by five of the inventors of record and on behalf of inventor Sverker HARD (identified as deceased) by his legal representative, Anna-Lena Hard.

On 25 September 2006, applicants filed the "Request For Corrected Notice Of Acceptance" considered herein. This submission requests correction of the "Date Of Completion Of All 35 U.S.C. 371 Requirements" on the Notification Of Acceptance to 13 April 2005.

DISCUSSION

1. Notification Of Acceptance

A review of the file reveals that the Notification Of Acceptance mailed 07 September 2005 was issued in part in reliance on the declaration filed by applicants during the international phase under PCT Rule 4.17(iv). However, the PCT Rule 4.17(iv) declaration filed by applicants during the international phase was not submitted at the same time as the international application (as evident by the signature dates on the declaration, which are later than the international filing date). Under such circumstances, as set forth on the face of the declaration (and in the instructions thereto), the declaration is required to set forth the international application number. The PCT Rule 4.17(iv) declaration filed by applicants in the international application did not include the required international application number. The declaration therefore fails to properly identify the application to which it was directed and cannot be accepted herein in satisfaction of the requirements of 37 CFR 1.497.

Based on the above, the Notification Of Acceptance mailed 07 September 2005, based as it was on applicants' purported submission during the international phase of a declaration in compliance with 37 CFR 1.497 and 35 U.S.C. 371(c)(4), is appropriately vacated. Applicants' request for correction of the dates set forth in this Notification is therefore properly dismissed as moot.

2. Declaration Filed 14 October 2005

As discussed above, the declaration filed during the international phase cannot be accepted in compliance with 37 CFR 1.497. Accordingly, the declaration filed herein on 14 October 2005 must be reviewed for compliance with the 37 CFR 1.497. Because the declaration filed on 14 October 2005 was executed on behalf of a deceased inventor by his legal representative, the declaration must also be considered under 37 CFR 1.42. It is noted that the declaration has been executed by the five surviving inventors.

37 CFR 1.42 states in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

37 CFR 1.497(b)(2) states:

If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person is the legal representative of a deceased inventor, the oath or declaration

shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

Pursuant to 37 CFR 1.497(b)(2), the citizenship for **both** the deceased inventor and the legal representative must be identified on the declaration (as well as the mailing address and residence information of the legal representative and all other information required under 37 CFR 1.497).

Here, the declaration filed 14 October 2005 includes the required citizenship, residence, and mailing address information for Anna-Lena Hard, the person signing the declaration on behalf of deceased inventor Sverker HARD. In addition, the declaration identifies Anna-Lena Hard as the “legal representative” of the deceased inventor, and it includes the citizenship of the deceased inventor and all other information required under 37 CFR 1.497.

Based on the above, the declaration filed 14 October 2005 is acceptable under 37 CFR 1.42 and 1.497. The submission of this declaration on 14 October 2005 satisfied the final requirement of 35 U.S.C. 371(c)(1), (c)(2), and (c)(4). Accordingly, the appropriate date under 35 U.C.S. 371(c)(1), (c)(2), and (c)(4) is 14 October 2005.

CONCLUSION

The Notification of Acceptance (Form PCT/DO/EO/903) and filing receipt mailed 07 September 2005, both of which incorrectly identified the date under 35 U.C.S. 371 (c)(1), (c)(2), and (c)(4) as 13 April 2005, are hereby **VACATED**.

Applicants’ “Request For Corrected Notice Of Acceptance” is **DISMISSED AS MOOT**.

Applicants’ request for status under 37 CFR 1.42 with respect to deceased inventor Sverker HARD is **GRANTED**.

The application is being referred to the National Stage Processing Branch of the Office of PCT Operations for issuance of a corrected Notification Of Acceptance (Form PCT/DO/EO/903) identifying **14 October 2005** as the “Date Of Receipt Of 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) Requirements” and the “Date Of Completion Of All 35 U.S.C. 371 Requirements,” as well as a corrected filing receipt identifying **14 October 2005** as the 35 U.S.C. 371(c) date.



Richard M. Ross
Attorney Advisor
Office Of PCT Legal Administration
Telephone: (571) 272-3296
Facsimile: (571) 273-0459